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**IN THE
COURT OF APPEALS OF INDIANA**

BERNEDA L. TAYLOR,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 71A03-0810-CR-526

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Roland W. Chamblee, Jr., Judge
Cause No. 71D08-0701-FC-17

February 6, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Following a jury trial, Appellant-Defendant Berneda Taylor was convicted of Class C felony Escape¹ and Class D felony Theft.² Upon appeal Taylor challenges the sufficiency of the evidence to support her theft conviction. We affirm.

FACTS AND PROCEDURAL HISTORY

On January 13, 2007, Gregory Hill, who manages Burlington Coat Factory in Mishawaka, heard the store's door buzzer go off. Sensor tags, which are placed in most of the store's merchandise, trigger the buzzer if they come within a certain range of the door. These sensor tags are removed from the merchandise before they reach the trigger range if the merchandise is purchased. Upon looking toward the door, Hill saw two persons, one wearing a black coat with fur trim and carrying a large bag, leave the store. Hill went to the door and saw the two persons enter a vehicle, with the person wearing the black coat entering the passenger side, and drive off.

Hill flagged down Mishawaka Police Officer Ahmed Jojo, who was driving past the store at the time, and pointed to the fleeing vehicle. Officer Jojo followed the vehicle, which led to a car chase, and he pursued the vehicle until it crashed. Upon approaching the vehicle, Officer Jojo determined that Taylor was the passenger and that her daughter, Tequila, was the driver. A small child was also in the vehicle. Officer Jojo discovered a "furry hat" in the front passenger seat, which Hill recognized to be the furry hood the person leaving his store had worn. Tr. p. 34. Behind the passenger seat, Officer Jojo and

¹ Ind. Code § 35-44-3-5(a) (2006).

² Ind. Code § 35-43-4-2(a) (2006).

Sergeant Brad Haney discovered several items, including two bags, one of which contained baby clothes identified by Hill to be Burlington Coat Factory merchandise worth approximately \$148. The baby clothes still had their store tags attached. Hill recognized one of the bags as the one he had seen being carried from the store. Hill further testified that, to his knowledge, the merchandise had not been paid for. There was no evidence of a receipt at the scene. There was no evidence that the merchandise contained the sensor tags which had apparently triggered the buzzer.

Due to the crash, Mishawaka Police Officer Michael Robinson accompanied Taylor, Tequila, and the child to the hospital in an ambulance. At the hospital, Taylor was placed in an individual examination room, where Officer Robinson informed her that she was under arrest and handcuffed her to the railing of the bed. Officer Robinson left Taylor's room to attend to Tequila. When he returned, he discovered Taylor's handcuffs dangling from the bed, and Taylor was missing. Paramedic David Foster later saw Taylor, claiming to have been released, leaving the hospital.

On January 19, 2007, the State charged Taylor with Class C felony escape (Count I) and Class D felony theft (Count II). Following an April 14-15, 2008 jury trial, Taylor was found guilty and convicted of both counts. At a June 5, 2008 sentencing hearing, the trial court sentenced Taylor to concurrent sentences of four years in the Department of Correction for Count I and eighteen months for Count II. The trial court suspended Taylor's sentence and placed her on probation for two years.

On July 10, 2008, Taylor petitioned the trial court for permission to file a belated notice of appeal, which the trial court granted on July 14, 2008. On November 26, 2008,

this court ordered Taylor to show cause as to why her appeal should not be dismissed as untimely. Following Taylor's December 5 and December 18, 2008 verified response and amended verified response, respectively, this court dismissed its order to show cause. This appeal follows.

DISCUSSION AND DECISION

On appeal, Taylor challenges the sufficiency of the evidence to support her theft conviction. Our standard of review for sufficiency-of-the-evidence claims is well-settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Kien v. State*, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), *trans. denied*. We consider only the evidence which supports the conviction and any reasonable inferences which the trier of fact may have drawn from the evidence. *Id.* We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt. *Id.* It is the function of the trier of fact to resolve conflicts of testimony and to determine the weight of the evidence and the credibility of the witnesses. *Jones v. State*, 701 N.E.2d 863, 867 (Ind. Ct. App. 1998).

Under Indiana Code section 35-43-4-2(a), a person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits Class D felony theft. In contesting the sufficiency of the evidence to establish theft, Taylor claims that the baby clothes were not shown to contain sensors, that Hill had not recognized one of the bags

found in the vehicle, and that Hill's testimony regarding his belief that the items had not been paid for was inadequate to establish that fact.

Taylor's claims are simply an invitation to reweigh the evidence, which we decline to do. Pursuant to Indiana Code section 35-43-4-4(c) (2006), evidence that a person conceals and removes store merchandise constitutes prima facie evidence that the person has exerted unauthorized control over the merchandise and has the intent to deprive the owner of its value. Here, Hill testified that he saw two persons leaving Burlington Coat Factory with a large bag, triggering the sensor tag alarm as they left. Hill identified and pointed out the persons' vehicle to Officer Jojo, who immediately chased it and apprehended Taylor, who was the vehicle's passenger. Upon apprehending Taylor, authorities discovered a bag behind her seat in the vehicle, which Hill recognized as the bag he had described, containing approximately \$148 in tagged Burlington Coat Factory merchandise for which she produced no receipt. Hill, who watched Taylor leave the store and identified the items after they were returned, testified that he believed they had not been purchased, and there was no evidence at trial suggesting they had been. The jury was within its fact-finding discretion to credit Hill's testimony and draw the reasonable inference from the above circumstances that Taylor had committed theft. As for Taylor's claims that the merchandise was not shown to contain the sensors which had apparently triggered the buzzer and that Hill did not recognize one of the bags found in Taylor's vehicle, the jury was similarly entitled to evaluate these facts, determine their

relative weight and relevance, and conclude that they did not constitute reasonable doubt under these circumstances.³

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and MAY, J., concur.

³ Taylor's escape from handcuffs and the hospital likely did not impress the jury. The handcuffs were left dangling, and Taylor was nowhere to be found. "Evidence of flight may be considered as circumstantial evidence of consciousness of guilt." *Brown v. State*, 563 N.E.2d 103, 107 (Ind. 1990).